

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ERIC TOLLIVER,

Plaintiff,

-against-

LIEUTENANT JORDAN; C.O. DEPALO; C.O.  
E. BONNELL; JOHN DOE #1; JANE DOE #1;  
JOHN DOE #2; JANE DOE #2,

Defendants.

**ORDER OF SERVICE**

**19-CV-11823 (PMH)**

PHILIP M. HALPERN, United States District Judge:

Plaintiff, currently incarcerated in Sing Sing Correctional Facility, brings this *pro se* action under 42 U.S.C. § 1983, alleging that Defendants transferred him to a new facility in retaliation for filing grievances. Plaintiff sues three correction officers at Sullivan County Correctional Facility, as well as John/Jane Doe Movement and Control officers at the New York State Department of Corrections and Community Supervision (“DOCCS”). By order dated April 1, 2020, the Court granted Plaintiff’s request to proceed without prepayment of fees, that is, *in forma pauperis* (“IFP”).

**DISCUSSION**

**A.      *Valentin* Order**

Under *Valentin v. Dinkins*, a *pro se* litigant is entitled to assistance from the district court in identifying a defendant. 121 F.3d 72, 76 (2d Cir. 1997). In the complaint, Plaintiff supplies sufficient information to permit DOCCS to identify the two John/Jane Doe Movement and Control officers responsible for transferring Plaintiff from Sullivan Correctional Facility to Attica Correctional Facility, and then from Attica to Five Points Correctional Facility. It is therefore ordered that the New York State Attorney General, who is the attorney for and agent of DOCCS,

must ascertain the identity of each John Doe whom Plaintiff seeks to sue here and the address where the defendant may be served. The Attorney General must provide this information to Plaintiff and the Court within sixty days of the date of this order.

Within thirty days of receiving this information, Plaintiff must file an amended complaint naming the John Doe defendants. The amended complaint will replace, not supplement, the original complaint. An amended complaint form that Plaintiff should complete is attached to this order. Once Plaintiff has filed an amended complaint, the Court will screen the amended complaint and, if necessary, issue an order directing the Clerk of Court to complete the USM-285 forms with the addresses for the named John Doe Defendants and deliver all documents necessary to effect service to the U.S. Marshals Service.

#### **B. Service on Identified Defendants**

Because Plaintiff has been granted permission to proceed IFP, he is entitled to rely on the Court and the U.S. Marshals Service to effect service. *Walker v. Schult*, 717 F.3d. 119, 123 n.6 (2d Cir. 2013); *see also* 28 U.S.C. § 1915(d) (“The officers of the court shall issue and serve all process . . . in [IFP] cases.”); Fed. R. Civ. P. 4(c)(3) (the court must order the Marshals Service to serve if the plaintiff is authorized to proceed IFP)). Although Rule 4(m) of the Federal Rules of Civil Procedure generally requires that the summonses and complaint be served within 90 days of the date the complaint is filed, Plaintiff is proceeding IFP and could not have served the summonses and complaint until the Court reviewed the complaint and ordered that summonses be issued. The Court therefore extends the time to serve until 90 days after the date the summonses are issued. If the complaint is not served within that time, Plaintiff should request an extension of time for service. *See Meilleur v. Strong*, 682 F.3d 56, 63 (2d Cir. 2012) (holding that it is the plaintiff’s responsibility to request an extension of time for service); *see also Murray v. Pataki*, 378 F. App’x

50, 52 (2d Cir. 2010) (“As long as the [plaintiff proceeding IFP] provides the information necessary to identify the defendant, the Marshals’ failure to effect service automatically constitutes ‘good cause’ for an extension of time within the meaning of Rule 4(m).”).

To allow Plaintiff to effect service on Defendants Lieutenant Jordan, Correction Officer DePalo, and Correction Officer E. Bonnell through the U.S. Marshals Service, the Clerk of Court is instructed to fill out a U.S. Marshals Service Process Receipt and Return form (“USM-285 form”) for each of these defendants. The Clerk of Court is further instructed to issue summonses and deliver to the Marshals Service all the paperwork necessary for the Marshals Service to effect service upon these defendants.

Plaintiff must notify the Court in writing if his address changes, and the Court may dismiss the action if Plaintiff fails to do so.

### **CONCLUSION**

The Clerk of Court is directed to mail a copy of this order to Plaintiff, together with an information package.

The Clerk of Court is further instructed to complete the USM-285 forms with the addresses for Lieutenant Jordan, Correction Officer DePalo, and Correction Officer E. Bonnell and deliver to the U.S. Marshals Service all documents necessary to effect service.

The Clerk of Court is directed to mail a copy of this order and the complaint to New York State Attorney General at 28 Liberty Street, 15th Floor, New York, New York 10005.

An “Amended Complaint” form is attached to this order.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore IFP status is denied for the purpose of an appeal. *Cf. Coppedge*

v. *United States*, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

**SO ORDERED:**

Dated: New York, New York  
May 6, 2020



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PHILIP M. HALPERN  
United States District Judge

**DEFENDANTS AND SERVICE ADDRESSES**

1. Lieutenant Jordan  
Sullivan Correctional Facility  
325 Riverside Drive  
P.O. Box 116  
Fallsburg, NY 12733-0116
2. Correction Officer DePalo  
Sullivan Correctional Facility  
325 Riverside Drive  
P.O. Box 116  
Fallsburg, NY 12733-0116
3. Correction Officer E. Bonnell  
Sullivan Correctional Facility  
325 Riverside Drive  
P.O. Box 116  
Fallsburg, NY 12733-0116

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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Write the full name of each plaintiff.

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CV  
(Include case number if one has been assigned)

-against-

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**COMPLAINT**

(Prisoner)

Do you want a jury trial?

Yes     No

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Write the full name of each defendant. If you cannot fit the names of all of the defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed above must be identical to those contained in Section IV.

**NOTICE**

The public can access electronic court files. For privacy and security reasons, papers filed with the court should therefore *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number. See Federal Rule of Civil Procedure 5.2.

## I. LEGAL BASIS FOR CLAIM

State below the federal legal basis for your claim, if known. This form is designed primarily for prisoners challenging the constitutionality of their conditions of confinement; those claims are often brought under 42 U.S.C. § 1983 (against state, county, or municipal defendants) or in a *"Bivens"* action (against federal defendants).

Violation of my federal constitutional rights

Other: \_\_\_\_\_

## II. PLAINTIFF INFORMATION

Each plaintiff must provide the following information. Attach additional pages if necessary.

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First Name

Middle Initial

Last Name

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State any other names (or different forms of your name) you have ever used, including any name you have used in previously filing a lawsuit.

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Prisoner ID # (if you have previously been in another agency's custody, please specify each agency and the ID number (such as your DIN or NYSID) under which you were held)

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Current Place of Detention

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Institutional Address

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County, City

State

Zip Code

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## III. PRISONER STATUS

Indicate below whether you are a prisoner or other confined person:

Pretrial detainee

Civilly committed detainee

Immigration detainee

Convicted and sentenced prisoner

Other: \_\_\_\_\_

**IV. DEFENDANT INFORMATION**

To the best of your ability, provide the following information for each defendant. If the correct information is not provided, it could delay or prevent service of the complaint on the defendant. Make sure that the defendants listed below are identical to those listed in the caption. Attach additional pages as necessary.

Defendant 1:

|  |           |          |
|--|-----------|----------|
| First Name   | Last Name | Shield # |
| Current Job Title (or other identifying information) |           |          |
| Current Work Address                                 |           |          |
| County, City   | State     | Zip Code |

Defendant 2:

|  |           |          |
|--|-----------|----------|
| First Name   | Last Name | Shield # |
| Current Job Title (or other identifying information) |           |          |
| Current Work Address                                 |           |          |
| County, City   | State     | Zip Code |

Defendant 3:

|  |           |          |
|--|-----------|----------|
| First Name   | Last Name | Shield # |
| Current Job Title (or other identifying information) |           |          |
| Current Work Address                                 |           |          |
| County, City   | State     | Zip Code |

Defendant 4:

|  |           |          |
|--|-----------|----------|
| First Name   | Last Name | Shield # |
| Current Job Title (or other identifying information) |           |          |
| Current Work Address                                 |           |          |
| County, City   | State     | Zip Code |

## **V. STATEMENT OF CLAIM**

Place(s) of occurrence: \_\_\_\_\_

Date(s) of occurrence: \_\_\_\_\_

### **FACTS:**

State here briefly the FACTS that support your case. Describe what happened, how you were harmed, and how each defendant was personally involved in the alleged wrongful actions. Attach additional pages as necessary.

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**INJURIES:**

If you were injured as a result of these actions, describe your injuries and what medical treatment, if any, you required and received.

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**VI. RELIEF**

State briefly what money damages or other relief you want the court to order.

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## VII. PLAINTIFF'S CERTIFICATION AND WARNINGS

By signing below, I certify to the best of my knowledge, information, and belief that: (1) the complaint is not being presented for an improper purpose (such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation); (2) the claims are supported by existing law or by a nonfrivolous argument to change existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Federal Rule of Civil Procedure 11.

I understand that if I file three or more cases while I am a prisoner that are dismissed as frivolous, malicious, or for failure to state a claim, I may be denied *in forma pauperis* status in future cases.

I also understand that prisoners must exhaust administrative procedures before filing an action in federal court about prison conditions, 42 U.S.C. § 1997e(a), and that my case may be dismissed if I have not exhausted administrative remedies as required.

I agree to provide the Clerk's Office with any changes to my address. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Each Plaintiff must sign and date the complaint. Attach additional pages if necessary. If seeking to proceed without prepayment of fees, each plaintiff must also submit an IFP application.

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Dated

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Plaintiff's Signature

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First Name

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Middle Initial

---

Last Name

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Prison Address

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County, City

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State

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Zip Code

Date on which I am delivering this complaint to prison authorities for mailing: \_\_\_\_\_